to induce the court to inquire into the legality of the acts of the plaintiff in practicing medicine and in conducting a hospital, matters which are clearly separate and distinct from the issue before the court, which is the right of defendant to use the word Pierce as a trade-mark in competition with the plaintiff's well-known remedies. The maintenance of the hospital and the indulgence in practice are admitted to be incidental to and separate from the main business of the plaintiff which is the manufacture and sale of the remedies. However, the court is divided on the application of the limitation on the maxim which the defendant sets up and solves the question by leaving it "unconsidered and undetermined."

TRUSTEE—BREACH OF TRUST—PROFITS.—Defendant was the legal representative of a widow who, before her death, had been trustee and tenant for life of the estate of her husband. The widow had made unauthorized investments in foreign mortgages and had received a greater profit than she would have received from authorized investments. The capital had not been decreased. Plaintiffs, who are the remaindermen under the husband's will, now attempt to force the defendant to account for the excess of income actually received over that obtainable from authorized investments. *Held*, the remaindermen can not recover. *In re Hoyles* [1912] 1 Ch. D. 67.

The general rule is that any gain in the value of trust property is regarded as an accretion to the corpus of the trust estate, and belongs to the remaindermen. HILL, TRUSTEES (4th Am. Ed.) 386; *Graham's Estate*, 198 Pa. St. 216; *Hubley's Estate*, 16 Phila. (Pa.) 327; *Stewart et al.* v. *Phelps et al.*, 75 N. Y. Supp. 526. The English courts, however, have held that a trustee who has paid the excessive income to another person who was tenant for life, is not bound to repay the excess to a remainderman when the capital was intact. *Stroud* v. *Gwyer* (1860) 28 Beav. 130; *Slade* v. *Chaine* [1908] 1 Ch. 522. The principal case extends the rule of the last cases cited, and further protects the trustee and tenant for life by holding that the remainderman can not recover even when the trustee and tenant for life is the same person. The case seems to be a liberal one as far as the rights of the trustee are concerned.

WILLS—CONSTRUCTION—GIFT TO SON AT TWENTY-SIX—VESTING.—Testator bequeathed a fourth part of certain property, severed from the rest of his estate and held in trust, together with the accumulations of the income thereof, to his son "when and so soon as he shall attain the age of twenty-six years" and until that age is attained to pay to him a part of the income. *Held*, that in the absence of a gift over the testator must have intended the legacy to be vested and therefore not to be diverted on the death of the son before arriving at the age of twenty-six. *In re Nunburnholme* (*Wilson* v. *Nunburnholme*) (1911) 81 L. J. Ch. 85.

A gift to the legatee "when and so soon as" he reaches a given age standing unqualified and uncontrolled is conditional. The words "when" and "if" used in reference to an uncertain event have a similar meaning; they denote the time when the gift is to take effect. *Hanson* v. *Graham*, 6 Ves. 239, 5 GRAY'S CASES, PROPERTY, 231. Until then the legacy is contingent upon the fulfilment of the condition and liable to lapse. 30 AM. & ENG. ENCYC. LAW, 771, 774.

But when it appears that testator intended his bounty to be absolute and merely postponed the time of payment the gift is vested. *Furness* v. *Fox,* 1 Cush. 134, *Goodtitle* v. *Whitby,* 1 Burr. 228. Comparatively slight circumstances have been held sufficient to show an intention that the legatee is to take a vested interest and that a condition precedent to the vesting was not intended by the testator. In *Booth* v. *Booth,* 4 Ves. Jr. 399, the fact that the gift was of a residue of an estate was held to be a distinguishing feature and to indicate an intention that the gift should vest. *Love* v. *L'Estrange,* 5 Bro. P. C. 59. The severance of the legacy from the remainder of the estate by placing it in trust is a strong indication that the testator desired to give the entire beneficial interest. *Greet* v. *Greet,* 5 Beav. 123. A gift of the proceeds or interest in the meantime vests the legacy, *Leake* v. *Robinson,* 2 Mer. 365. But there must be a gift of the whole interest; a provision for maintenance is not of itself sufficient, *Roden* v. *Smith,* Ambl. 588, unless it includes all the interest for it is "the giving the interest" and "not the giving the maintenance" that vests the legacy. *Watson* v. *Hayes,* 5 My. & Cr. 125, 133; *Hoath* v. *Hoath,* 2 Bro. C. C. 3. An authority conferred upon the trustees to use their discretion in appropriating all or a part of the income to the use of the beneficiaries was held not to affect this principle but that the legacy vested. *Fox* v. *Fox,* L. R. 19 Eq. 286. A direction to accumulate the interest and dividends and then to pay at the age of twenty-five vests the legacy. *Saunders* v. *Vautier,* 4 Beav. 115. The court in the absence of any cases directly in point decided that the direction to accumulate the income for the benefit of the legatee and to sever the property from the rest of the estate indicated an intention on the part of the testator that the legacy should vest and rebutted the presumption arising from the use of the word "when" that the gift was contingent.

WITNESSES—ADMISSIBILITY OF PARENTS' TESTIMONY TO PROVE ILLEGITIMACY OF THEIR CHILD.—This was an action by a husband against a wife for annulment of the marriage, the defendant cross-claiming for the support of the child. Petitioner, replying to the cross-petition argued that he was not obligated for the support of the child as he was not its father, and he offered himself as a witness to prove that fact. His testimony was excluded by the trial court. *Held,* a putative father is incompetent to testify that a child born to the mother after marriage, though conceived before is not his child. *Palmer* v. *Palmer* (N. J. Eq. 1912) 82 Atl. 358.

This is the first time that the question has arisen for decision in the forum although the point was once mentioned in *Wallace* v. *Wallace,* 73 N. J. Eq. 403. The rule has had a peculiar history. At the early common law there was no rule at all against using the testimony of a husband or a wife to prove the non-access of the husband as evidence that some other than the husband was the father of the child. *St. Andrews* v. *St. Brides,* 1 Sessions Cas. K. B. 117; *Pendrell* v. *Pendrell,* 2 Stra. 925; *R.* v. *St. Peter,* Bull. N. P. 112. Then, beginning with the case of *The King and Reading* (1734) Lee temp. Hardwicke, 79, it was held that in filiation proceedings, the testimony of the wife alone cannot be received as evidence of the non-access of